

Memorandum



Date: June 16, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

IM&FR

AGENDA ITEM NO. 3B5

From: George M. Burgess
County Manager

Subject: Recommendation for Approval to Award Contract Nos. 477a, 477b, 477c and 477d for External Independent Audit Services

RECOMMENDATION:

It is recommended that the Board of County Commissioners (BCC) approve the award of audit contracts to KPMG LLP, Rachlin Cohen & Holtz LLP and Watson Rice LLP and waive the BCC reconsideration period. A waiver of the reconsideration period is requested in order to ensure continuity of services since existing contracts expire in August 2005:

CONTRACT NOS: 477a, 477b, 477c and 477d

CONTRACT TITLE: External Independent Audit Services

DESCRIPTION: These contracts are being awarded to obtain independent certified public accountants licensed to practice in the State of Florida to conduct annual external audits for the following segments of the County:

1. General Segment Audit
2. Water and Sewer Segment Audit
3. Aviation Management Contracts Segment Audit
4. Aviation Segment Audit

The waiver of the period for BCC motion for reconsideration pursuant to Resolution No. R-377-04 is required to ensure that the successor contracts can become effective in August 2005, when the existing contracts expire, to ensure continuity of services.

APPROVAL TO ADVERTISE: January 26, 2005

TERM: Three (3) year period plus two (2) one (1) year options to renew. The term of the contracts will be renewed at the County's sole discretion.

FUNDING SOURCE: Finance, Water & Sewer and Aviation Operating Funds

CONTRACT AMOUNT: Not-to-exceed \$6,196,983 in the aggregate for the initial three years of the contract (approximately \$2,065,661 annually)

METHOD OF AWARD: An open competitive RFP process was used for this award.

VENDORS RECOMMENDED
FOR AWARD:

1. KPMG LLP – General Segment Audit and Aviation Segment Audit
2. Rachlin Cohen & Holtz LLP - Water & Sewer Segment Audit
3. Watson Rice LLP - Aviation Management Contracts Segment Audit

VENDORS NOT RECOMMENDED
FOR AWARD:

Moore Stephens Lovelace, PA
Sanson Kline Jacomino & Co. LLP
S. Davis & Associates, P.A.
UHY LLP
Ernst & Young LLP

USING DEPARTMENTS:

Finance, Water & Sewer and Aviation Departments

MANAGING AGENCY:

Finance Department

CONTRACT MEASURES:

Not Applicable

LIVING WAGE:

Not Applicable

UAP:

These contracts includes the 2% User Access Fee provision.

LOCAL PREFERENCE:

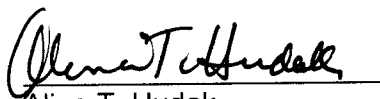
Applied in accordance with applicable ordinances, but did not affect the outcome.

ESTIMATED CONTRACT
COMMENCEMENT DATE:

After adoption by the Board of County Commissioners (BCC), unless vetoed by the Mayor.

COMMENTS:

Negotiations with the highest ranked firm for the Aviation Audit Segment, Ernst & Young LLP, were not successful. The proposer required that language be added to the contract which the County could not agree to regarding dispute resolution, minimizing the indemnification coverage by the proposer, fee increases for events beyond the County's control, and the right of the proposer to terminate the contract. Pursuant to the RFP competitive process, the County began negotiations with the second highest ranked proposer, KPMG LLP, from which a successful contract resulted and is herein recommended for award.


Alina T. Hudak




MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 7, 2005

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor

Agenda Item No.

Veto

Override

RESOLUTION NO.

RESOLUTION AUTHORIZING EXECUTION OF AGREEMENTS WITH KPMG LLP, RACHLIN COHEN & HOLTZ LLP, AND WATSON RICE LLP TO OBTAIN EXTERNAL INDEPENDENT AUDIT SERVICES, AUTHORIZING THE COUNTY MANAGER TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY, TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN, AND AUTHORIZING A WAIVER OF THE PERIOD FOR BOARD OF COUNTY COMMISSIONERS MOTION FOR RECONSIDERATION. CONTRACT NOS. 477A, 477B, 477C AND 477D

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the selection of KPMG LLP, Rachlin Cohen & Holtz LLP, and Watson Rice LLP, in substantially the form attached hereto and made a part hereof, and authorizes the County Manager to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and any other rights contained therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of July, 2005. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. 18

By: _____
Deputy Clerk

EXTERNAL INDEPENDENT AUDITING SERVICES
FOR THE GENERAL SEGMENT AUDIT CONTRACT

Contract No. 477a

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between **KPMG LLP**, a limited liability partnership organized and existing under the laws of the **State of Delaware**, having its **principal office at Two South Biscayne Boulevard, Suite 2800, Miami, Florida 33131** (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide external independent auditing services for the annual examination of the County's financial statements, that shall conform to the Scope of Services (**Scope of Service which is attached hereto as Appendix A**); Miami-Dade County's Request for Proposals (RFP) No. 477 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated April 8, 2005, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor such external independent auditing services and certain other services performed for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 477 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective, which shall be the date set forth above.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean **KPMG LLP** and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and

things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 477 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement policy changes implemented by the County and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall be for the duration of three (3) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period of two (2) additional years on a year-to-year basis. Changes to the Scope of Work shall be mutually agreed upon and fees will be negotiated accordingly.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County**a) to the Project Manager:**

Miami-Dade County
Finance Director's Office
Stephen P. Clark Center
111 NW 1st Street, Suite 2550
Miami, FL 33128
Attention: Rachel Baum, Director
Phone: (305) 375-5245
Fax: (305) 375-5659

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

KPMG LLP
Two South Biscayne Boulevard, Suite 2800
Miami, Florida 33131
Attention: Karen Mitchell, Partner
Phone: (305) 358-2300
Fax: (305) 913-2692
e-mail: kamitchell@kpmg.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given

upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of **Two Million Six Hundred Eighteen Thousand Four Hundred and Fifty Dollars (\$2,618,450.00)** that shall be paid in the following manner:

Fiscal Year ending September 30, 2005	\$854,000.00
Fiscal Year ending September 30, 2006	\$873,200.00
Fiscal Year ending September 30, 2007	\$891,250.00

Should the County opt for additional years; the total amounts will be as follows:

Fiscal Year ending September 30, 2008	\$908,800.00
Fiscal Year ending September 30, 2009	\$937,200.00

It is further agreed and understood that additional work and Services requested limited to **\$100,000.00** per year, and approved in writing by the County shall be based on the following hourly rates by classification for this contract and its Options to Renew:

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Partner:	\$600.00	\$610.00	\$625.00	\$650.00	\$660.00
Senior Manager:	\$550.00	\$560.00	\$570.00	\$580.00	\$590.00
Manager:	\$400.00	\$420.00	\$450.00	\$460.00	\$475.00
Senior:	\$300.00	\$325.00	\$330.00	\$340.00	\$350.00
Staff:	\$175.00	\$185.00	\$200.00	\$210.00	\$225.00

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. PRICING

Prices are as stipulated on **Article 7** of this Agreement; however, the Contractor may offer incentive discounts to the County at any time during the contractual term and any extensions thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract

number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses and minority and women business enterprises shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

**Miami-Dade County
Finance Manager
Miami International Airport
P.O.Box 59-2075AMS
Miami, FL 33159-2075
Attention: Ezekiel Orji, Manager Financing Division**

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from and against all claims or suits (including attorney's fees and costs of defense) asserted or prosecuted by third parties arising out of Contractor's failure to satisfy its obligations under the Agreement, or Contractor's failure to satisfy its obligations under this Agreement, or Contractor's failure to satisfy its obligations under generally accepted auditing standards, through error, omission or negligent act of the Contractor or its employees, or that of its subcontractors or their employees, if any; provided, however, that the Contractor is given reasonable notice of, and the opportunity to defend, settle and compromise any such claim. Such indemnification expressly exclude any claims or suits arising from County or County employee's negligent acts. Nothing contained herein, however, is intended to confer on any third party any rights or benefits hereunder. The Contractor expressly understands and agrees that insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Contractor shall furnish to RFP Unit, Miami-Dade County, Department of Procurement Department, 111 N.W. 1st Street, Suite 1375, Miami, Florida 33128, Certificate(s) of Insurance indicating that insurance coverage has been obtained which

meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage to amounts less than those specified above without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the written request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel, performing services hereunder at the behest of the County.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said

personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of

the Scope of Services; and claims for damages, compensation and losses.

- b) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- c) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- d) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters related to this Agreement. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a

Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities; skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be

responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed

for the sole purpose of this Agreement and not incorporated in the Services:

- v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- e) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the

County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprourement of Services, including procurement and administrative costs; and,

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- f) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made

or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's

property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) Notwithstanding the forgoing, the Contractor shall retain title to its work papers.
- b) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that

have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management - Bids and Contracts Section, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the Contractor is aware that the County has the right to retain the services of an Independent Private Sector

Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract

specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment and shall not discriminate against employees or employee applicants because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation,

maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County and signing the Disability Nondiscrimination Affidavit attached hereto (**see Form A-4**), the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or

- in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
- ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
 - c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
 - d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
 - e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. YEAR 2000 COMPATIBILITY

The Contractor shall be compliant with Year 2000 in all manners that may affect this Agreement.

ARTICLE 37. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any

product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 38. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 39. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the contractor has with the County, the contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 40. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of PHI only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to the Secretary of HHS for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information, if applicable.

ARTICLE 41. COUNTY USER ACCESS PROGRAM (UAP)**a) User Access Fee**

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth.

Contractor

Miami-Dade County

By: JPM & LP
 Name: James Mitchell
 Title: Partner
 Date: 5.25.2005
 Attest: _____
 Corporate Secretary

By: _____
 Name: _____
 Title: _____
 Date: _____
 Attest: _____
 Clerk of the Board

Witness: [Signature]

Approved as to form
and legal sufficiency

Assistant County Attorney



LESLIE A. DREICHLER
 MY COMMISSION # DD 414884
 EXPIRES: May 15, 2009
 Bonded Thru Budget Notary Services

Leslie A. Dreichler

APPENDIX A

SECTION 2.0 - SCOPE OF SERVICES

1.1 INTRODUCTION/BACKGROUND

Section 4.03 (G) of the Dade County Home Rule Charter, as amended, requires an audit by an independent certified public accountant of the accounts and finances of the County for each fiscal year completed. Therefore, the County is requesting the services of qualified certified public accountant firms to audit its financial statements for the fiscal year ending September 30, 2005, with the County option to renew this contract to audit the County's financial statements for each of the four subsequent fiscal years (on a year-to year basis) at the discretion of the County.

2. SERVICES REQUESTED

2.1. GENERAL SEGMENT AUDIT

The External Auditor selected will perform in the capacity as the County's principal auditor for the preparation and issuance of the General Purpose Financial Statements and will be responsible for auditing the County's General Fund, other governmental fund types, Enterprise Funds (not separately audited) and certain account groups, including, coordination of the County's OMB Circular A-133, financial and compliance audit of all Federal and State grant in aid programs (Single Audit Act of 1984, as amended, and the State of Florida Single Audit Act).

a. Annual Audit Requirements

- 1). The audit shall be a financial audit as defined in Section 11.45, Florida Statutes, and Section 10.557, Rules of the Auditor General, comprising the Comprehensive Annual Financial Report (CAFR) including the basic general purpose financial statements, combining individual fund financial statements, certain required supplementary information, and certain other supplementary financial data, exclusive of the Enterprise Funds separately contracted and audited by other independent certified public accountants.
- (2) Annual financial and compliance audit of all federal and State grant-in-aid programs in accordance with OMB Circular A-133, the Single Audit Act of 1984, as amended, and the State of Florida Single Audit Act.
- (3) Annual management letter which is to make known certain recommendations of the audit firm which if implemented would, in the firm's opinion, increase efficiency, improve internal controls, improve management, etc.
- (4) Annual reports to include:
 - a. Statement of Revenues, Expenditures and Allocation of Funds Additional Courts Costs (Section 27.3455, Florida Statutes)
 - b. Statement of Conflict Counsel Fees, Section 925.037(5)(a), Florida Statutes and Statement of Conflict Counsel Expenses and Costs, Section 925.037(5)(b), Florida Statutes.

- c. Special license plates (Arts and Choose Life) pursuant to Chapters 320.08506 and 320.08058, Florida Statutes.
- d. Florida Department of Environmental Protection pursuant to Chapter 370.0605, Florida Statutes.
- e. Florida Game and Fresh Water Commission pursuant to Chapter 372.561 Florida Statutes.
- f. U.S. Department of Justice "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies".
- g. School Board Impact Fee Audit (Metro-Dade County Ordinance 95-79, Impact Fee Manual and Interlocal Agreement).
- h. Solid Waste Full Disclosure pursuant to Florida Department of Environmental Protection Rule 17-708.
- i. Solid Waste Landfill pursuant to Florida Department of Environmental Protection Rule 17-701.
- j. Safe Neighborhood Parks Bonds Audits (Miami-Dade County Ordinance 96-115):
 - Office of Safe Neighborhood Parks
 - Park and Recreation Department

b. Other Services

(1) Additional auditing services which may be required include the preparation of special reports for financing purposes as determined by the County Finance Director, litigation support as determined by the County Attorney, and any other special audits as determined by the County Finance Director. Prior approval by the County Finance Director shall be required.

(2) Any other additional audit work is limited to an annual fee cap of no more than \$150,000. Such work may arise from changes in GAAP, GAAS, Federal and State requirements, or client imposed scope changes, special internal control reviews, efficiency reviews, benchmarking studies, rate matters or specialized research and training and must be pre-approved by the County Finance Director.

For items a. and b. above, the County will request engagement letters.

3. PERFORMANCE SPECIFICATIONS

1. The firm shall adhere to:

- a. "Generally Accepted Auditing Standards" applicable to governmental units, as promulgated by the AICPA.
- b. Governmental standards promulgated by the GASB.
- c. Federal and State statutes, reporting requirements under the Single Audit Act of 1984 as amended, the State of Florida Single Audit Act, OMB Circular A-133, Rules of Auditor General (Section 10.557, Florida statutes), and Government Auditing Standards issued by the Comptroller General of the United States.

- d. GAO standards, regulations and guidelines applicable in the State of Florida, and will conduct the audit in accordance with these requirements existing, or as may be pronounced during the period or term of this audit engagement.
2. The audit report shall contain:
 - a. an opinion of the auditor on the financial statements;
 - b. a report on internal control; and
 - c. reports on Federal and State financial assistance where applicable.
 3. Review of the system of internal accounting control and internal administrative control to the extent accepted Auditing Standards and requirements of the Single Audit Act.
 4. Fulfill requirements of Section 10.557 of the Rules of the Auditor General, including:
 - a. Preparation of Annual Financial Audit Report.
 - b. Preparation of Single Audit Report and other necessary Federal and State Reports.

A final and complete report of the audit shall be submitted to the Board of County Commissioners and to the Comptroller of the State of Florida not later than March 31 of each succeeding fiscal year. The auditor shall complete all field work by December 31 and submit required financial reports to the County's Finance Department no later than December 31. Individual components of the audit may be required prior to this date.

Submission not later than April 30 of each succeeding fiscal year of a management letter which shall identify control and management weaknesses observed, assess their effect on financial management and propose steps to eliminate them. The final management letter to Board of County Commissioners shall include response to such comments.

The auditor shall without additional charge, make available their work papers to any Federal or State Agency upon request and in accordance with Federal and State Law and Regulations.

All contracts between the County and any of its agencies and instrumentalities and any company providing external auditing services shall contain language mandating the external auditor, within five (5) days of completion of its final audit, to deliver copies of said audit to the Mayor, the Clerk of the Circuit and County Courts and members of the County Commission. Additionally, all such contracts shall specifically state that external auditors shall be liable for damages to the County if the auditors fail to fulfill any provision of their contract with the County.

EXTERNAL INDEPENDENT AUDITING SERVICES
FOR THE WATER & SEWER DEPARTMENT SEGMENT AUDIT CONTRACT

Contract No. 477c

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between **Rachlin Cohen & Holtz LLP**, a corporation organized and existing under the laws of the **State of Florida**, having its **principal office at One Southeast Third Avenue, Tenth Floor, Miami, FI 33131** (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide external independent auditing services for the annual examination of the County's financial statements, that shall conform to the Scope of Services (**Scope of Service which is attached hereto as Appendix A**); Miami-Dade County's Request for Proposals (RFP) No. 477 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated April 8, 2005, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor such external independent auditing services and certain other services performed for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

EXTERNAL INDEPENDENT AUDITING SERVICES
FOR THE AVIATION SEGMENT AUDIT

Contract No. 477b

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between **KPMG LLP**, a limited liability partnership organized and existing under the laws of the **State of Delaware**, having its **principal office at Two South Biscayne Boulevard, Suite 2800, Miami, Florida 33131** (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide external independent auditing services for the annual examination of the County's financial statements, that shall conform to the Scope of Services (**Scope of Service which is attached hereto as Appendix A**); Miami-Dade County's Request for Proposals (RFP) No. 477 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated April 8, 2005, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor such external independent auditing services and certain other services performed for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 477 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective, which shall be the date set forth above.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean **KPMG LLP** and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of

this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 477 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement policy changes implemented by the County and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall be for the duration of three (3) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period of two (2) additional years on a year-to-year basis. Changes to the Scope of Work shall be mutually agreed upon and fees will be negotiated accordingly.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County**a) to the Project Manager:**

Miami-Dade County
Finance Director's Office
Stephen P. Clark Center
111 NW 1st Street, Suite 2550
Miami, FL 33128
Attention: Rachel Baum, Director
Phone: (305) 375-5245
Fax: (305) 375-5659

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

KPMG LLP
Two South Biscayne Boulevard, Suite 2800
Miami, Florida 33131
Attention: Karen Mitchell, Partner
Phone: (305) 358-2300
Fax: (305) 913-2692
e-mail: kamitchell@kpmg.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed appropriate in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount **One Million Forty Thousand Three Hundred Twenty-Five Dollars (\$1,040,325.00)** that shall be paid in the following manner:

Fiscal Year ending September 30, 2005	\$330,000.00
Fiscal Year ending September 30, 2006	\$346,500.00
Fiscal Year ending September 30, 2007	\$363,825.00

Should the County opt for additional years; the total amounts will be as follows:

Fiscal Year ending September 30, 2008	\$378,400.00
Fiscal Year ending September 30, 2009	\$393,500.00

It is further agreed and understood that additional work and Services requested limited to **\$100,000.00** per year, and approved in writing by the County shall be based on the following hourly rates by classification for this contract and its Options to Renew:

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Partner:	\$600.00	\$610.00	\$625.00	\$650.00	\$660.00
Senior Manager:	\$550.00	\$560.00	\$570.00	\$580.00	\$590.00
Manager:	\$400.00	\$420.00	\$450.00	\$460.00	\$475.00
Senior:	\$300.00	\$325.00	\$330.00	\$340.00	\$350.00
Staff:	\$175.00	\$185.00	\$200.00	\$210.00	\$225.00

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. PRICING

Prices are as stipulated on **Article 7** of this Agreement; however, the Contractor may offer incentive discounts to the County at any time during the contractual term and any extensions thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County

agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses and minority and women business enterprises shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

**Miami-Dade County
Finance Manager
Miami International Airport
P.O.Box 59-2075AMS
Miami, FL 33159-2075
Attention: Miriam Abreu, Chief Accountant**

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from and against all claims or suits (including attorney's fees and costs of defense) asserted or prosecuted by third parties arising out of Contractor's failure to satisfy its obligations under the Agreement, or Contractor's failure to satisfy its obligations under this Agreement, or Contractor's failure to satisfy its obligations under generally accepted auditing standards, through error, omission or negligent act of the Contractor or its employees, or that of its subcontractors or their employees, if any; provided, however, that the Contractor is given reasonable notice of, and the opportunity to defend, settle and compromise any such claim. Such indemnification expressly exclude any claims or suits arising from County or County employee's negligent acts. Nothing contained herein, however, is intended to confer on any third party any rights or benefits hereunder. The Contractor expressly understands and agrees that insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Contractor shall furnish to RFP Unit, Miami-Dade County, Department of Procurement Department, 111 N.W. 1st Street, Suite 1375, Miami, Florida 33128, Certificate(s) of Insurance indicating that insurance coverage has been obtained which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage to amounts less than those specified above without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the written request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel, performing services hereunder at the behest of the County.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

- b) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- c) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- d) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or

otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters related to this Agreement. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were

employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters,

projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;

- v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- e) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to

the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for procurement of Services, including procurement and administrative costs; and,

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses,

applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- f) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for

the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees,

except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) Notwithstanding the forgoing, the Contractor shall retain title to its work papers.
- b) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use,

duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management - Bids and Contracts Section, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the Contractor is aware that the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for

the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents

available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment and shall not discriminate against employees or employee applicants because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County and signing the Disability Nondiscrimination Affidavit attached hereto (**see Form A-4**), the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best

of the Contractor's knowledge any subcontractor or supplier to the Contractor.

- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. YEAR 2000 COMPATIBILITY

The Contractor shall be compliant with Year 2000 in all manners that may affect this Agreement.

ARTICLE 37. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 38. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 39. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the contractor has with the County, the contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 40. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of PHI only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to the Secretary of HHS for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information, if applicable.

ARTICLE 41. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth.

Contractor

Miami-Dade County

By: KPMG LLP
Name: Kornatchell
Title: partner
Date: 5.31.2005
Attest: _____
Corporate Secretary

By: _____
Name: _____
Title: _____
Date: _____
Attest: _____
Clerk of the Board

Witness: [Signature]

Approved as to form
and legal sufficiency

Assistant County Attorney



LESLIE A. DREICHLER
MY COMMISSION # DD 414894
EXPIRES: May 15, 2009
Bonded Thru Budget Notary Services

Leslie A. Dreichler

APPENDIX A

SCOPE OF SERVICES

1. INTRODUCTION/BACKGROUND

Section 4.03 (G) of the Dade County Home Rule Charter, as amended, requires an audit by an independent certified public accountant of the accounts and finances of the County for each fiscal year completed. Therefore, the County is requesting the services of qualified certified public accountant firms to audit its financial statements for the fiscal year ending September 30, 2005, with the County option to renew this contract to audit the County's financial statements for each of the four subsequent fiscal years (on a year-to-year basis) at the discretion of the County.

2. SERVICES REQUESTED

2.1. AVIATION SEGMENT AUDIT

The County's Aviation Segment consists of the audit of normal Aviation Department operations for the preparation and issuance of Component Unit financial statements. The Aviation Department is in the process of issuing bonds which in effect will merge the Port Authority Properties (PAP) and Aviation Development Facilities (ADF), thereby, eliminating separate reports for Non-Port Authority Properties (NPAP) and the need for separate financial statements.

a. Annual Audit Requirements

(1) Annual financial audit of the operations of the Aviation Department in accordance with the covenants of the Trust Agreement, as amended, and applicable laws and regulations. The Aviation Department will need separate financial statements for the General Aviation (GA) Airports (Opa-Locka and Tamiami).

The audit shall include any financial audit or report and compliance requirements pertaining to the Passenger Facility Charges (PFC) as required by the Federal Aviation Administration (FAA).

(2) Annual operating and financial reports in compliance with the Federal Aviation Administration (FAA). One report (FAA Form 5100-125, OPERATING AND FINANCIAL SUMMARY) pertains to the total revenue and expenditures at an airport, including surplus revenue. The other report (FAA FORM 5100-126, FINANCIAL GOVERNMENT PAYMENT REPORT) pertains to amounts paid to other units of government for services received.

(3) Annual financial and compliance audits of all Federal and State grant-in-aid programs in accordance with OMB circular A-133 and the Single Audit Act of 1984, as amended, and the State of Florida Single Audit Act.

(4) Annual management letter which is to make known certain recommendations of the audit firm which if implemented would, in the firm's opinion, increase efficiency, improve internal controls, improve management, etc.

b. Other Services

(1) Additional auditing services which may be required, include the preparation of special reports for financing purposes as determined by the County Finance Director, litigation support as determined by the County Attorney, and any other special audits as determined by the County Finance Director. Prior approval by the County Finance Director shall be required.

(2) Any other additional audit work is limited to an annual fee cap of no more than \$100,000. Such work may arise from changes in GAAP, GAAS, Federal and State requirements, or client imposed scope changes, special internal control reviews, efficiency reviews, benchmarking studies, rate matters or specialized research and training and must be pre-approved by the County Finance Director.

For items a. and b. above, the County will request engagement letters.

3. PERFORMANCE SPECIFICATIONS

1. The firm shall adhere to:

- a. "Generally Accepted Auditing Standards" applicable to governmental units, as promulgated by the AICPA.
- b. Governmental standards promulgated by the GASB.
- c. Federal and State statutes, reporting requirements under the Single Audit Act of 1984 as amended, the State of Florida Single Audit Act, OMB Circular A-133, Rules of Auditor General (Section 10.557, Florida statutes), and Government Auditing Standards issued by the Comptroller General of the United States.
- d. GAO standards, regulations and guidelines applicable in the State of Florida, and will conduct the audit in accordance with these requirements existing, or as may be pronounced during the period or term of this audit engagement.

2. The audit report shall contain:

- a. an opinion of the auditor on the financial statements;
- b. a report on internal control; and
- c. reports on Federal and State financial assistance where applicable.

3. Review of the system of internal accounting control and internal administrative control to the extent accepted Auditing Standards and requirements of the Single Audit Act.

4. Fulfill requirements of Section 10.557 of the Rules of the Auditor General, including:

- a. Preparation of Annual Financial Audit Report.
- b. Preparation of Single Audit Report and other necessary Federal and State Reports.

A final and complete report of the audit shall be submitted to the Board of County Commissioners and to the Comptroller of the State of Florida not later than March 31 of each succeeding fiscal year. The auditor shall complete all field work by December 31 and submit required financial reports to the County's Finance Department no later than December 31. Individual components of the audit may be required prior to this date.

Submission not later than April 30 of each succeeding fiscal year of a management letter which shall identify control and management weaknesses observed, assess their effect on financial management and propose steps to eliminate them. The final management letter to Board of County Commissioners shall include response to such comments.

The auditor shall without additional charge, make available their work papers to any Federal or State Agency upon request and in accordance with Federal and State Law and Regulations.

All contracts between the County and any of its agencies and instrumentalities and any company providing external auditing services shall contain language mandating the external auditor, within five (5) days of completion of its final audit, to deliver copies of said audit to the Mayor, the Clerk of the Circuit and County Courts and members of the County Commission. Additionally, all such contracts shall specifically state that external auditors shall be liable for damages to the County if the auditors fail to fulfill any provision of their contract with the County.

EXTERNAL INDEPENDENT AUDITING SERVICES
FOR THE WATER & SEWER DEPARTMENT SEGMENT AUDIT CONTRACT

Contract No. 477c

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between **Rachlin Cohen & Holtz LLP**, a corporation organized and existing under the laws of the **State of Florida**, having its **principal office at One Southeast Third Avenue, Tenth Floor, Miami, FL 33131** (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide external independent auditing services for the annual examination of the County's financial statements, that shall conform to the Scope of Services (**Scope of Service which is attached hereto as Appendix A**); Miami-Dade County's Request for Proposals (RFP) No. 477 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated April 8, 2005, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor such external independent auditing services and certain other services performed for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 477 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective, which shall be the date set forth above.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean **Rachlin Cohen & Holtz LLP** and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and

things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 477 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with

input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall be for the duration of three (3) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period of two (2) additional years on a year-to-year basis. Changes to the Scope of Work shall be mutually agreed upon and fees will be negotiated accordingly.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County
Finance Director's Office
Stephen P. Clark Center
111 NW 1st Street, Suite 2550
Miami, FL 33128
Attention: Rachel Baum, Director
Phone: (305) 375-5245
Fax: (305) 375-5659

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

One Southeast Third Avenue, 10th Floor
Miami, FL 33131
Attention: G. Jerry Chiocca, CPA, Partner
Phone: (305) 377-4228
Fax: (305) 377-8331
e-mail: jchiocca@rachlin.com

Either party may at any time designate a different address and/or contact person by

giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of **Five Hundred Sixty Seven Thousand Four Hundred and Fifty Dollars (\$567,450.00)** that shall be paid in the following manner:

Fiscal Year ending September 30, 2005	\$180,000.00
Fiscal Year ending September 30, 2006	\$189,000.00
Fiscal Year ending September 30, 2007	\$198,450.00

The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

Should the County opt for additional years; the total amounts will be as follows:

Fiscal Year ending September 30, 2008	\$208,375.00
Fiscal Year ending September 30, 2009	\$218,800.00

It is further agreed and understood that additional work and Services requested limited to **\$100,000.00** per year, and approved in writing by the County shall be based on the following hourly rates by classification for this contract and its Options to Renew:

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Partner:	\$ 288.00	\$ 300.00	\$ 310.00	\$ 315.00	\$ 320.00
Manager:	\$ 200.00	\$ 205.00	\$ 205.00	\$ 210.00	\$ 215.00
Supervisor:	\$ 138.00	\$ 145.00	\$ 155.00	\$ 160.00	\$ 165.00
Senior:	\$ 120.00	\$ 125.00	\$ 130.00	\$ 140.00	\$ 150.00
Staff:	\$ 100.00	\$ 105.00	\$ 110.00	\$ 115.00	\$ 125.00

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

ARTICLE 8. PRICING

Prices are as stipulated on **Article 7** of this Agreement; however, the Contractor may offer incentive discounts to the County at any time during the contractual term and any extensions thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses and minority and women business enterprises shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

**Miami-Dade County
Water & Sewer Department
3071 SW 38 Avenue, Room 440-10
Miami, FL 33146
Attention: Dana Moss, Assistant Director - Finance**

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the

Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, RFP Section, 111 N.W. 1st Street, Suite 1375, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence with a deductible per claim not to exceed ten percent (10%) of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the

Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the

behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or

judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause

for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the

- bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting

from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprourement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements

with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be

construed as publication in derogation of the County's copyrights or other proprietary rights.

- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management - Bids and Contracts Section, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who

has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the Contractor is aware that the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state

and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.

- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County and signing the Disability Nondiscrimination Affidavit attached hereto (**see Form A-4**), the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. YEAR 2000 COMPATIBILITY

The Contractor shall be compliant with Year 2000 in all manners that may affect this Agreement.

ARTICLE 37. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 38. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 39. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the contractor has with the County, the contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 40. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 41. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is

voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth.

Contractor

Miami-Dade County

By: J. Jerry Chiocci

By: _____

Name: G. Jerry Chiocci

Name: _____

Title: Partner

Title: _____

Date: May 23, 2005

Date: _____

Attest: _____
Secretary

Attest: _____
Clerk of the Board

Teresa Cochran
5/23/05

Approved as to form
and legal sufficiency

Assistant County Attorney



Teresa Cochran
My Commission DD238534
Expires November 28, 2007

APPENDIX A

SCOPE OF WORK

1. INTRODUCTION/BACKGROUND

Section 4.03 (G) of the Dade County Home Rule Charter, as amended, requires an audit by an independent certified public accountant of the accounts and finances of the County for each fiscal year completed. Therefore, the County is requesting the services of qualified certified public accountant firms to audit its financial statements for the fiscal year ending September 30, 2005, with the County option to renew this contract to audit the County's financial statements for each of the four subsequent fiscal years (on a year-to year basis) at the discretion of the County.

2. SERVICES REQUESTED

2.1 WATER AND SEWER SEGMENT AUDIT

Miami-Dade Water and Sewer Department audit consists of the audit of Department operations for the preparation and issuance of Comprehensive Annual Financial Report, together with coordination of the Department's financial and compliance audit of all Federal and State assistance programs in accordance with OMB Circular A-133, the Single Audit Act of 1984, as amended, and the State of Florida Single Audit Act.

a. Annual Audit Requirements

- (1) Annual financial audit of the financial information comprising the Comprehensive Annual Financial Report including the general purpose financial statements and certain financial data for the Miami-Dade Water and Sewer Department.
- (2) Audit of component information submitted to Dade County for inclusion in the County's Comprehensive Annual Financial Report.
- (3) Annual financial and compliance audit of all Federal and State grant-in-aid programs and loans in accordance with OMB Circular A-133, the Single Audit Act of 1984, as amended, and in accordance with the State of Florida Single Audit Act.
- (4) Annual management letter which is to make known certain recommendations of the audit firm which if implemented would, in the firm's opinion, increase efficiency, improve internal controls, improve management, etc.
- (5) Annual debt compliance letter reports.

b. Other Services

- (1) Additional auditing services which may be required, include the preparation of special reports for financing purposes as determined by the County Finance Director, litigation support as determined by

the County Attorney, and any other special audits as determined by the County Finance Director. Prior approval by the County Finance Director shall be required.

(2) Any other additional audit work is limited to an annual fee cap of no more than \$100,000. Such work may arise from changes in GAAP, Federal and State requirements, or client imposed scope changes, special internal control reviews, efficiency reviews, benchmarking studies, rate matters or specialized research and training and must be pre-approved by the County Finance Director.

For items a. and b. above, the County will request engagement letters.

3. PERFORMANCE SPECIFICATIONS

1. The firm shall adhere to:

- a. "Generally Accepted Auditing Standards" applicable to governmental units, as promulgated by the AICPA.
- b. Governmental standards promulgated by the GASB.
- c. Federal and State statutes, reporting requirements under the Single Audit Act of 1984 as amended, the State of Florida Single Audit Act, OMB Circular A-133, Rules of Auditor General (Section 10.557, Florida statutes), and Government Auditing Standards issued by the Comptroller General of the United States.
- d. GAO standards, regulations and guidelines applicable in the State of Florida, and will conduct the audit in accordance with these requirements existing, or as may be pronounced during the period or term of this audit engagement.

2. The audit report shall contain:

- a. an opinion of the auditor on the financial statements;
- b. a report on internal control; and
- c. reports on Federal and State financial assistance where applicable.

3. Review of the system of internal accounting control and internal administrative control to the extent accepted Auditing Standards and requirements of the Single Audit Act.

4. Fulfill requirements of Section 10.557 of the Rules of the Auditor General, including:

- a. Preparation of Annual Financial Audit Report.
- b. Preparation of Single Audit Report and other necessary Federal and State Reports.

A final and complete report of the audit shall be submitted to the Board of County Commissioners and to the Comptroller of the State of Florida not later than March 31 of each succeeding fiscal year. The auditor shall complete all field work by December 31 and submit required financial reports to the County's Finance Department no later than December 31. Individual components of the audit may be required prior to this date.

Submission not later than April 30 of each succeeding fiscal year of a management letter which shall identify control and management weaknesses observed, assess their effect on financial management and propose steps to eliminate them. The final management letter to Board of County Commissioners shall include response to such comments.

The auditor shall without additional charge, make available their work papers to any Federal or State Agency upon request and in accordance with Federal and State Law and Regulations.

All contracts between the County and any of its agencies and instrumentalities and any company providing external auditing services shall contain language mandating the external auditor, within five (5) days of completion of its final audit, to deliver copies of said audit to the Mayor, the Clerk of the Circuit and County Courts and members of the County Commission. Additionally, all such contracts shall specifically state that external auditors shall be liable for damages to the County if the auditors fail to fulfill any provision of their contract with the County.

EXTERNAL INDEPENDENT AUDITING SERVICES
FOR THE AVIATION MANAGEMENT CONTRACTS SEGMENT AUDIT

Contract No. 477d

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between **Watson Rice LLP.**, a limited liability partnership organized and existing under the laws of the **State of Florida**, having its **principal office at 500 NW 165th Street Road, Suite 205, Miami, Florida 33169** (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide external independent auditing services for the annual examination of the County's financial statements, that shall conform to the Scope of Services (**Scope of Service which is attached hereto as Appendix A**); Miami-Dade County's Request for Proposals (RFP) No. 477 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated April 7, 2005, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor such external independent auditing services and certain other services performed for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these "Terms and Conditions", the Scope of Services (Appendix A), RFP No. 477 and all associated addenda, appendices and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective, which shall be the date set forth above.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean **Watson Rice LLP** and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "Subcontractor" or "Subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor or materials, in connection with the Work, whether directly or indirectly, on behalf or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and

things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these Terms and Conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 477 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. Subject to Generally Accepted Auditing Standards the Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and

fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall be for the duration of three (3) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period of two (2) additional years on a year-to-year basis. Changes to the Scope of Work shall be mutually agreed upon and fees will be negotiated accordingly.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case addressed as follows:

(1) To the County

a) to the Project Manager:

Miami-Dade County
Finance Director's Office
Stephen P. Clark Center
111 NW 1st Street, Suite 2550
Miami, FL 33128
Attention: Rachel Baum, Director
Phone: (305) 375-5245
Fax: (305) 375-5659

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

Watson Rice LLP
500 NW 165th Street Road, Suite 205
Miami, Florida 33169
Attention: Ronald Thompkins, Partner
Phone: (305) 947-1638
Fax: (305) 944-6225

ARTICLE 8. PRICING

Prices are as stipulated in **Article 7** of this Agreement; however, the Contractor may offer incentive discounts to the County at any time during the Contract term and any extensions thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses and minority and women business enterprises shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

**Miami-Dade County
Finance Manager
Miami International Airport
P.O.Box 59-2075AMS
Miami, FL 33159-2075
Attention: Miriam ABreu, Chief Accountant**

The County may at any time designate a different address and/or contact person by giving written notice to Contractor.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from and against all claims or suits (including attorney's fees and costs of defense) asserted or prosecuted by third parties arising out

e-mail: rthompkins@watsonrice.com.com

Either party may at any time designate a different address or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of **Six Hundred Twenty Thousand Seven Hundred and Fifty-Eight Dollars (\$620,758.00)** that shall be paid in the following manner:

Fiscal Year ending September 30, 2005	\$200,500.00
Fiscal Year ending September 30, 2006	\$206,515.00
Fiscal Year ending September 30, 2007	\$213,743.00

The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

Should the County opt for additional years; the total amounts for each year will be as follows:

Fiscal Year ending September 30, 2008	\$215,000.00
Fiscal Year ending September 30, 2009	\$215,000.00

It is further agreed and understood that the value of any additional Work and Services requested and approved in writing by the County shall be based limited to **\$100,000.00** per year based on the following hourly rates by classification for this Contract and the periods for which the County exercises any Options to Renew:

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Partner:	\$175.00	\$180.00	\$185.00	\$190.00	\$195.00
Senior Manager:	\$165.00	\$170.00	\$175.00	\$180.00	\$180.00
Manager:	\$140.00	\$145.00	\$150.00	\$155.00	\$160.00
Senior:	\$100.00	\$105.00	\$110.00	\$115.00	\$120.00
Staff:	\$ 70.00	\$ 75.00	\$ 80.00	\$ 85.00	\$ 90.00
Clerical:	\$ 45.00	\$ 50.00	\$ 50.00	\$ 50.00	\$ 55.00

All Services undertaken by the Contractor before the County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as it pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

of Contractor's failure to satisfy its obligations under the Agreement, or Contractor's failure to satisfy its obligations under this Agreement, or Contractor's failure to satisfy its obligations under generally accepted auditing standards, through error, omission or negligent act of the Contractor or its employees, or that of its subcontractors or their employees, if any; provided, however, that the Contractor is given reasonable notice of, and the opportunity to defend, settle and compromise any such claim. Nothing contained herein, however, is intended to confer on any third party any rights or benefits hereunder. The Contractor expressly understands and agrees that insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Contractor shall furnish to RFP Unit, Miami-Dade County, Department of Procurement Department, 111 N.W. 1st Street, Suite 1375, Miami, Florida 33128, Certificate(s) of Insurance indicating that insurance coverage has been obtained which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest

"List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage to amounts less than those specified above without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee,

subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all Work Services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the Work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to the

Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the Work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of independent contractor and not employee or agent of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that, consistent with Generally Accepted Auditing Standard, the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitation: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contract's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) Consistent with Generally Accepted Auditing Standards, the Contractor shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Project Manager shall so state in a written notice to the Contractor. The Contractor shall have ten (10) days from the date it receives said notice from the Project Manager in which to request that the County Manager resolve the dispute. All such requests shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Except as such remedies may be limited or waived elsewhere in this Agreement. Exhaustion of these procedures shall be a condition precedent to any lawsuit or other remedies permitted by law.
- d) In the event of a dispute that is not resolved by the Project Manager and the Contractor, the parties to this Agreement authorize the County Manager or his designee other than the Project Manager or anyone associated with this Project to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and such decision with respect to matters within the County Manager's purview as set forth Article 14(a) above shall be final.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its Subcontractors and suppliers which apply to all this Project. Such records shall conform to Generally Accepted Accounting Standards.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified in the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution, which approval the County shall not unreasonably withhold, delay or condition.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part hereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The Services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the Services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

- e) The County Manager, or his or her designee may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination, consistent with Generally Accepted Auditing Standards, of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager, or his or her designee, is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, or his or her designee, shall render a decision in writing and deliver a copy of the same to the Contractor. The County Manager, or his or her designee, shall render a written decision within a reasonable time of receipt of the Contractor's request, but in no event less than thirty (30) days.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereof and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by a duly authorized representative of each party.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third-party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense of any claims if the County should so choose. Furthermore, after written notice to the Contractor and a reasonable opportunity to cure, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its Subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its Subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

106

- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which are required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's proprietary and Confidential Information, as defined in Article 28(a) hereof. The Contractor shall furnish to the County copies of all subcontracts between the Contractor and any Subcontractor and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County, after ten (10) days written notice to the Contractor and reasonable opportunity to cure, to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, and in such event, (but only in such event), the option to pay the Subcontractor directly for the performance by such subcontractor. The foregoing notwithstanding, nothing in this Agreement shall neither convey or imply any obligation or liability on the part of the County to any Subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. Since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees, with regard to them, The County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions drawn therefrom, and said assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor against the County. As between the County and the Contractor, the Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud,

misrepresentation or material misstatement.

- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and any Services or Work that the County order to be performed after the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and which have specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

- f) All compensation pursuant to this Article is subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the reasonable determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured or this Agreement with the County may be terminated. The foregoing notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may, in its sole discretion, grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The Default Notice shall specify the date the Contractor shall discontinue the Services, which shall be the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprourement of Services, if any, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secrets, or any other third-party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third-party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify and hold harmless the County and defend any action brought against the County with respect to any claim,

demand, cause of action, debt, or liability.

- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation, at the County's option to (i) modify, or require that the applicable Subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or Subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and Subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- e) The Contractor shall not infringe any copyright, trademarks, service marks, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works, as defined in Article 30(b) hereof, and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or for which the County holds the proprietary rights, constitute "Confidential Information" and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, Subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, Subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and its officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, Subcontractors and

suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, Subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the Contract, the Contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third-party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the Contractors and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the Contractor's employees with the approval of the lessor thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, Subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, Subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights. Since they are not created for delivery to the County, the County shall have no proprietary rights in the Contractor's work papers and such work papers are not within the scope of the documents referred to in this paragraph.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its Subcontractors specifically for the County, herein referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, Subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, Subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its Subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its Subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such

license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management - Bids and Contracts Section, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the Contractor is aware that the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, Subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct

an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third-party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and the procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and

agreements from and with successful and unsuccessful Subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. The Contractor and subcontractors performing Work in connection with this Contract shall provide equal opportunity for employment, and shall not discriminate against employees or employee applicants because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the Work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at Section 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe

and sound manner, and laws and regulations regarding Generally Accepted Auditing Standards.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County and signing the Disability Nondiscrimination Affidavit attached hereto (**see Form A-4**), the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (the "Act") or Miami-Dade County Resolution No. R-385-95 (referred to herein as the "Resolution". If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of the Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or Work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any Subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent,

subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. The Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions the Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. YEAR 2000 COMPATIBILITY

The Contractor shall be compliant with Year 2000 in all manners that may affect this Agreement.

ARTICLE 37. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor and suppliers has been approved or endorsed by the County.

ARTICLE 38. SURVIVAL

The parties acknowledge that many of the obligations in this Agreement will survive the

term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 39. BANKRUPTCY

The County reserves the right to terminate this Contract, if, during the term of any contract the Contractor has with the County, the contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 40. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "individually identifiable health information" (IIHI) and/or "Protected Health Information" (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the Contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and Subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making PHI available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 41. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth.

Contractor

Miami-Dade County

By: [Signature]

By: _____

Name: Ronald Thompkins

Name: _____

Title: Partner

Title: _____

Date: May 25, 2005

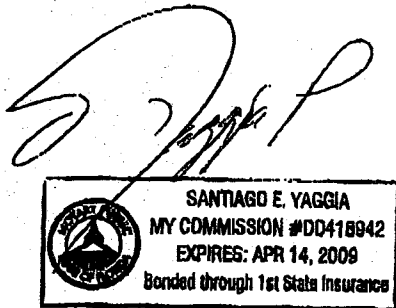
Date: _____

Attest: _____
Secretary

Attest: _____
Clerk of the Board

Approved as to form
and legal sufficiency

Assistant County Attorney



Exp 04/14/09

APPENDIX A

SCOPE OF SERVICES

1 INTRODUCTION/BACKGROUND

Section 4.03 (G) of the Dade County Home Rule Charter, as amended, requires an audit by an independent certified public accountant of the accounts and finances of the County for each fiscal year completed. Therefore, the County is requesting the services of qualified certified public accountant firms to audit its financial statements for the fiscal year ending September 30, 2003, with the County option to renew this contract to audit the County's financial statements for each of the four subsequent fiscal years (on a year-to year basis) at the discretion of the County.

2. SERVICES REQUESTED

1. AVIATION MANAGEMENT CONTRACTS SEGMENT AUDIT

Currently the Aviation Department has 13 management contracts, some of which include retail stores, food and beverage facilities, parking facilities and the airport hotel. The assets of these facilities are included as assets of the Aviation Department. The respective revenues and expenditures of each of these entities are also incorporated in the general revenues and expenditures of the Aviation Department. The audit services will consist of the audit of these operations and the preparation and issuance of individual financial statements which must be completed by December 1, of each fiscal year. The Aviation Department has a plan under consideration, which would convert 3 of the 13 Management Contracts to Concession Agreements by the end of September 2003. When this conversion take place, less contracts would need to be audited since the Concession Agreements may require concessionaires to provide their own audited financial statements. The County, therefore, reserves the right to re-negotiate any agreements with the selected proposer at such time as additional Management Contracts are converted to Concession Agreements.

a. Annual Audit Requirements

- (1) Annual financial audit of the various Aviation Department management contracts which include retail, food and beverage facilities, parking facilities and the airport hotel.
- (2) Annual management and compliance letters. The management letter will make known certain recommendations of the audit firm which if implemented would, in the firm's opinion, increase efficiency, improve internal controls, improve management, etc.

b. Other Services

- (1) Additional auditing services which may be required, include the preparation of special reports for financing purposes as determined by the County Finance Director, litigation support as determined by the County Attorney, and any other special audits as determined by the County Finance Director. Prior approval by the County Finance Director shall be required.

(2) Any other additional audit work is limited to an annual fee cap of no more than \$100,000. Such work may arise from changes in GAAP, GAAS, Federal and State requirements, or client imposed scope changes, special internal control reviews, efficiency reviews, benchmarking studies, rate matters or specialized research and training and must be pre-approved by the County Finance Director.

For items a. and b. above, the County will request engagement letters.

3. PERFORMANCE SPECIFICATIONS

1. The firm shall adhere to:

- a. "Generally Accepted Auditing Standards" applicable to governmental units, as promulgated by the AICPA.
- b. Governmental standards promulgated by the GASB.
- c. Federal and State statutes, reporting requirements under the Single Audit Act of 1984 as amended, the State of Florida Single Audit Act, OMB Circular A-133, Rules of Auditor General (Section 10.557, Florida statutes), and Government Auditing Standards issued by the Comptroller General of the United States.
- d. GAO standards, regulations and guidelines applicable in the State of Florida, and will conduct the audit in accordance with these requirements existing, or as may be pronounced during the period or term of this audit engagement.

2. The audit report shall contain:

- a. an opinion of the auditor on the financial statements;
- b. a report on internal control; and
- c. reports on Federal and State financial assistance where applicable.

3. Review of the system of internal accounting control and internal administrative control to the extent accepted Auditing Standards and requirements of the Single Audit Act.

4. Fulfill requirements of Section 10.557 of the Rules of the Auditor General, including:

- a. Preparation of Annual Financial Audit Report.
- b. Preparation of Single Audit Report and other necessary Federal and State Reports.

A final and complete report of the audit shall be submitted to the Board of County Commissioners and to the Comptroller of the State of Florida not later than March 31 of each succeeding fiscal year. The auditor shall complete all field work by December 31 and submit required financial reports to the County's Finance Department no later than December 31. Individual components of the audit may be required prior to this date.

Submission not later than April 30 of each succeeding fiscal year of a management letter which shall identify control and management weaknesses observed, assess their effect

on financial management and propose steps to eliminate them. The final management letter to Board of County Commissioners shall include response to such comments.

The auditor shall without additional charge, make available their work papers to any Federal or State Agency upon request and in accordance with Federal and State Law and Regulations.


All contracts between the County and any of its agencies and instrumentalities and any company providing external auditing services shall contain language mandating the external auditor, within five (5) days of completion of its final audit, to deliver copies of said audit to the Mayor, the Clerk of the Circuit and County Courts and members of the County Commission. Additionally, all such contracts shall specifically state that external auditors shall be liable for damages to the County if the auditors fail to fulfill any provision of their contract with the County.

Memorandum

MIAMI-DADE
COUNTY

Date: May 27, 2005

To: Miriam Singer, Director
Department of Procurement Management

From: Oscar Willumsen, Jr., Procurement Contracting Officer 
Department of Procurement Management

Subject: Request to Negotiate with Second Ranked Proposer for External Independent Segment Audit.
RFP No. 477

Background:

Pursuant to the attached Report of the Evaluation/Selection Committee for RFP No. 477, approval was granted to enter into negotiations with the highest scoring firm, Ernst & Young LLP for the Aviation Segment Audit. Negotiations were held on May 20, 2005, however, a successful contract did not result as contractual language for the following items could not be agreed upon:

- 1) Dispute Resolution
- 2) Indemnification
- 3) Additional Fees
- 4) Termination Clause

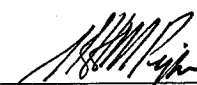
Request for authorization to enter negotiations:

In accordance with RFP 477, "If the County and the selected Proposer cannot negotiate a successful contract, the County may terminate said negotiations and begin negotiations with another selected Proposer." Therefore, it is requested that authorization be given to terminate negotiations with Ernst & Young LLP for the reasons stated above and to enter into negotiations with the second highest ranked proposer, KPMG LLP.

The technical scores and price proposals of the two top ranked Proposers are as follows:

Proposer	Technical Score	Price Score	Total Score Technical & Price (a+b)=c	Price/Cost Submitted
	(a)	(b)		
Aviation Segment				
1. Ernst & Young LLP	579	70.00	649.00	\$ 966,776
2. KPMG LLP	574	58.55	632.55	\$ 1,155,780

Authorization to negotiate is:

 FOR
Approved M. SINGER Date 5/27/05

Not Approved _____ Date _____

125

Memorandum



Date: April 18, 2005

To: Those Listed Below

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name.

Subject: Request for Evaluation/Selection Committee for the Finance Department Request for Proposals for External Independent Audit Services - RFP No. 477

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for the Finance Department Request for Proposals for External Independent Audit Services - RFP No. 477:

Selection Committee

Oscar Willumsem, DPM, Non-Voting Chairperson
Rachel Baum, Finance -
Jose Fernandez, Finance
Charles Anderson, OCA
Cathy Jackson, AMS
Miriam Abreu, MDAD
Dana Moss, MDWASD
Sheri McGriff, DBD
R. Terry Smith, BD (Alternate)

RECEIVED
DEPARTMENT OF
PROCUREMENT MANAGEMENT
05 APR 18 AM 10:06
MIAMI-DADE COUNTY
FLORIDA

The Selection Committee will meet to review written or printed material regarding the qualifications of each of the certified firms as it relates to the requirements defined in the advertised document. If required, the Selection Committee will select several candidate firms meeting the published criteria, to make oral presentations at a properly noticed public hearing to the full Selection Committee.

The Selection Committee shall be responsible for evaluating, rating and ranking the proposals by each Committee member, based on the criteria and procedure contained in the advertised document. The Evaluation/Selection Committee will first evaluate and rank responsive proposals on the Technical (Quality) criteria. If responsive proposers are invited to make oral presentations, the Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness to the technical requirements. All requests for specific determinations shall be made in writing to the County Attorney's Office.

You are directed to assist me in the selection process considering the factors delineated in the advertised document. These factors may include methodology and management approach, qualifications and experience of principals and staff, financial stability, proposer's past performance of similar scope and size, proposer's detailed plans to meet the objectives of each task, activity, etc., pursuant to any schedule, proposer's previous County experience, history and experience of the firm or individual(s), understanding of the project and the County's objectives, responsiveness to the established requirements, and Cost/Revenue (normally separate and sealed). When the document requires the proposer to provide cost/revenue in a separate sealed envelope, cost/revenue will be considered separately and after the other criteria have been evaluated.

If you are unable to participate in the Selection process, contact this office through the Department of Business Development (DBD) by memorandum documenting the reason why you cannot participate. Only in cases of dire urgency may you be excused from participation.

The alternate committee member will serve only in the event of an approved substitution. No substitution of committee members shall be allowed after the first official meeting of the committee. The Department of Procurement Management's (DPM) RFP Unit may substitute the chairperson to ensure the appropriate level of staffing expertise as deemed necessary to accommodate the needs of this solicitation.

Following the oral presentation, or upon completion of the review process, the Committee shall prepare and submit a memorandum to include a narrative of the evaluation and justification of the top recommended firm(s) based upon the reasoning and mathematical formula, if utilized, and attach supporting documentation and a summary sheet which MUST include the following information:

Name of firm(s)
Quality Rating Score
Price
Adjusted Score (if applicable)
Committee's Overall Ranking

This report should be submitted to me through the DPM and the DBD for review and consideration for further recommendation to the Board of County Commissioners.

As a matter of administrative policy and to maintain a fair and impartial process, all individuals appointed to the Selection Committee (including the Chairperson) and staff are instructed to refrain from discussing the solicitation with prospective lobbyists and/or consultants. Committee members are reminded that in accordance with the Cone of Silence Ordinance 98-106, they are prohibited from having any communication with potential respondents and/or their representatives. Violation of this policy could lead to termination.

All questions must be directed to the staff contact person(s) designated by the issuing department.

c: Miriam Singer, Director, DPM
Carlos Bonzon, Assistant County Manager/Interim Director, MDAD
William M. Brant, Director, MDWASD
Marsha E. Jackman, Director, DBD
Charles Danger, Director, Building Department

Selection Committee

Oscar Willumsem, DPM, Non-Voting Chairperson
Rachel Baum, Finance
Jose Fernandez, Finance
Charles Anderson, OCA
Cathy Jackson, AMS
Miriam Abreu, MDAD
Dana Moss, MDWASD
Sheri McGriff, DBD
R. Terry Smith, BD (Alternate)

**EVALUATION/SELECTION COMMITTEE FOR THE
FINANCE DEPARTMENT
REQUEST FOR PROPOSAL FOR
EXTERNAL INDEPENDENT AUDIT SERVICES**

RFP NO. 477

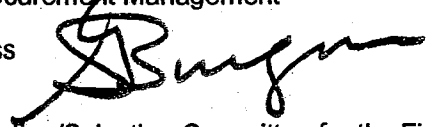
Committee Member/ Title	Department	Start Year With County	Ethnicity/ Gender	Education	Professional Licenses	Telephone #
Oscar Willumsem Non-Voting Chairperson	DPM	--	--	--	--	(305) 375-1416
Rachel Baum Director	Finance	1976	White Female	Bachelor of Arts in Mathematics	CPA	(305) 375-5245
Jose Fernandez Accounting Manager	Finance	1992	Hispanic Male	Masters in Accounting	CPA	(305) 375-5080
Charles Anderson Commission Auditor	OCA	2004	Black Male	Bachelor of Science in Accounting	CPA	(305) 375-5716
Cathy Jackson Director	AMS	1990	Black Female	Bachelors in Business Administration and Accounting	CPA	(305) 349-6122
Miriam Abreu Chief of Accounting	MDAD	1995	Hispanic Female	Bachelors in Business Administration and Accounting	CPA	(305) 869-1501
Dana Moss Assistant Director of Finance	MDWASD	2000	Black Male	Masters in Business Administration Bachelors in Accounting	CPA	(786) 552-8104
Sheri McGriff, Director Administrative and Financial Management Division	DBD	1973	Black Female	Masters in Business Administration Bachelor of Science in Business/Computer Science	N/A	(305) 375-3123
R. Terry Smith, Director Finance and Administration Division (Alternate)	BD	1980	White Male	Bachelor of Business Administration	CPA	(786) 315-2337

Memorandum



Date: April 21, 2005

To: Oscar Willumsen, Chairperson
Department of Procurement Management

From: George M. Burgess
County Manager 

Subject: Request for Evaluation/Selection Committee for the Finance Department Request for Proposals
for External Independent Audit Services - RFP No. 477 (**Substitution #1**)

Please be advised that I am substituting Graciela Cespedes of the Finance Department in place of Rachel Baum of the same department (see attachment). Should you have any questions, please refer them to Sharon Ryland of the Department of Business Development.

Attachment

Selection Committee

Oscar Willumsem, DPM, Non-Voting Chairperson
Graciela Cespedes, Finance
Jose Fernandez, Finance
Charles Anderson, OCA
Cathy Jackson, AMS
Miriam Abreu, MDAD
Dana Moss, MDWASD
Sheri McGriff, DBD
R. Terry Smith, BD (Alternate)

c: Miriam Singer, Director, DPM
Rachel Baum, Director, Finance
Carlos Bonzon, Assistant County Manager/Interim Director, MDAD
William M. Brant, Director, MDWASD
Marsha E. Jackman, Director, DBD
Charles Danger, Director, Building Department

RECEIVED
DEPARTMENT OF
PROCUREMENT MANAGEMENT
05 APR 22 PM 3:12
MIAMI-DADE COUNTY
FLORIDA

**EVALUATION/SELECTION COMMITTEE FOR THE
FINANCE DEPARTMENT
REQUEST FOR PROPOSAL FOR
EXTERNAL INDEPENDENT AUDIT SERVICES**

**RFP NO. 477
(SUBSTITUTION #1)**

Committee Member/ Title	Department	Start Year With County	Ethnicity/ Gender	Education	Professional Licenses	Telephone #
Oscar Willumsem Non-Voting Chairperson	DPM	--	--	--	--	(305) 375-1416
Graciela Cespedes Deputy Finance Director	Finance	1978	Hispanic Female	Bachelors in Business Administration	CPA	(305) 375-5147
Jose Fernandez Accounting Manager	Finance	1992	Hispanic Male	Masters in Accounting	CPA	(305) 375-5080
Charles Anderson Commission Auditor	OCA	2004	Black Male	Bachelor of Science in Accounting	CPA	(305) 375-5716
Cathy Jackson Director	AMS	1990	Black Female	Bachelors in Business Administration and Accounting	CPA	(305) 349-6122
Miriam Abreu Chief of Accounting	MDAD	1995	Hispanic Female	Bachelors in Business Administration and Accounting	CPA	(305) 869-1501
Dana Moss Assistant Director of Finance	MDWASD	2000	Black Male	Masters in Business Administration Bachelors in Accounting	CPA	(786) 552-8104
Sheri McGriff, Director Administrative and Financial Management Division	DBD	1973	Black Female	Masters in Business Administration Bachelor of Science in Business/Computer Science	N/A	(305) 375-3123
R. Terry Smith, Director Finance and Administration Division (Alternate)	BD	1980	White Male	Bachelor of Business Administration	CPA	(786) 315-2337

Memorandum



Date: May 13, 2005

To: Miriam Singer, Director
Department of Procurement Management

From: *for S.* Oscar Willumsen, Jr., Chairperson
Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 477, External Independent Audit Services

The Evaluation/Selection Committee has completed the task of evaluating proposals submitted in response to the above referenced Request for Proposals ("RFP") following the guidelines published in the RFP solicitation as follows:

Project No.: RFP No. 477

Project Title: External Independent Audit Services

Purpose of the RFP: To solicit proposals from independent certified public accountants licensed to practice in the State of Florida to conduct annual external audits for the following segments of the County:

- General Segment Audit
- Aviation Segment Audit
- Water and Sewer Segment Audit
- Aviation Management Contracts Segment Audit

Term of contract: Three (3) year period plus two (2) one (1) year options to renew the term at the County's sole discretion.

Review Committee: N/A

Date of BCC's approval to advertise: January 26, 2005

Number of solicitations and announcements issued:

48 RFP's downloaded from Department of Procurement Management's website
0 RFP's picked-up from the Vendor Assistance Unit
4 advertisements in periodicals
480 announcements issued to potential proposers

Date of Pre-Proposal Conference/Site Visit: March 21, 2005

Number of addenda and dates issued: Addendum No. 1 issued March 29, 2005
Addendum No. 2 issued April 1, 2005

Deadline for receipt of proposals: April 8, 2005

Number of proposals received:

Eleven

General Segment - 2 proposals
Aviation Segment - 3 proposals
Water & Sewer Segment - 3 proposals
Aviation Contracts Mgt. Segment - 3 proposals

Name of proposers:

1. Ernst & Young LLP
2. KPMG LLP
3. Moore Stephens Lovelace, P.A.
4. Rachlin Cohen & Holtz LLP
5. S. Davis & Associates, P.A.
6. Sanson, Kline, Jacomino & Co., LLP
7. UHY LLP
8. Watson Rice LLP

Committee meeting dates: April 27, 2005 ("Kick-off Meeting")
May 12, 2005 (Technical & Price Evaluation)

DBD Verification of eligibility or compliance with Contract Measures: Not applicable since the Review Committee did not assign any measures to this RFP.

Other information: Re-solicited due to Hershel Gill finding. All four segments had goals.

Summary of Committee scores:

Technical scores (max. 630 points):

<i>Proposer</i>	<i>Technical Score</i>
General Segment	
1. KPMG LLP	571
2. Ernst & Young LLP	561
Aviation Segment	
1. Ernst & Young LLP	579
2. KPMG LLP	574
3. UHY LLP	417
Water & Sewer Segment	
1. Rachlin Cohen & Holtz LLP	535
2. Moore Stephens Lovelace, PA	459
3. UHY LLP	398
Aviation Management Contracts Segment	
1. Watson Rice LLP	518
2. Sanson Kline Jacomino & Co. LLP	480
3. S. Davis & Associates, P.A.	386

The Committee decided not to hold oral presentations since the proposals did not require further clarification. Price proposals were opened for those firms remaining in consideration after the review and scoring of technical proposals. Only the top two highest ranked proposals were considered for price review.

Final Scores:

The total final scores are as follows:

<i>Proposer</i>	<i>Technical Score</i>	<i>Price Score</i>	<i>Total Score Technical & Price</i>	<i>Local Preference* (# - 5% = #)</i>	<i>Price/Cost Submitted</i>
General Segment					
1. KPMG LLP	571	70.00	641.00	608.95	\$2,618,450
2. Ernst & Young LLP	561	62.88	623.88		\$2,914,900
Aviation Segment					
1. Ernst & Young LLP	579	70.00	649.00	616.55	\$ 966,776
2. KPMG LLP	574	58.55	632.55		\$ 1,155,780
Water & Sewer Segment					
1. Rachlin Cohen & Holtz LLP	535	59.07	594.07	564.37	\$ 594,195
2. Moore Stephens Lovelace, PA	459	70.00	529.00		\$ 501,441
Aviation Management Contracts Segment					
1. Watson Rice LLP	518	70.00	588.00	558.60	\$ 620,758
2. Sanson Kline Jacomino & Co. LLP	480	61.64	541.64		\$ 705,000

***Local Preference:** Local Preference was considered in accordance with applicable ordinances, but did not affect the outcome, as all of the top-ranked firms are local. The number provided in the "Local Preference" column above, indicates the score that a local firm would have to reach in order to claim local preference (if the top-ranked firm is a non-local firm).

Copies of the score sheets are attached for each Evaluation/Selection Committee Member, as well as a composite score sheet.

Request for authorization to enter negotiations:

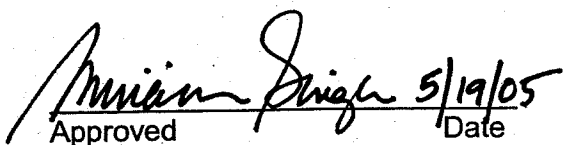
It is respectfully requested that authorization be given to enter into negotiations with the firm with the highest score for each segment as shown below:

KPMG LLP, General Segment
Ernst & Young LLP, Aviation Segment
Rachlin Cohen & Holtz LLP, Water & Sewer Segment
Watson Rice LLP, Aviation Management Contracts Segment

The following individuals are recommended to participate in the negotiation team:

Oscar Willumsen, Jr., Procurement Contracting Officer, DPM
Cathy Jackson, Department Director, AMS
Graciela Cespedes, Deputy Finance Director, Finance
Dana Moss, Assistant Director – Finance, WASD

Authorization to negotiate is:

 5/19/05
Approved Date

Not Approved

Date

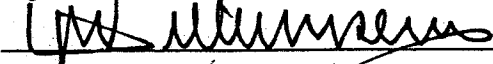
cc: Evaluation/Selection Committee
Negotiation Team

RFP No. 477a
External Independent Audit Services
EVALUATION OF PROPOSALS
General Segment Audit

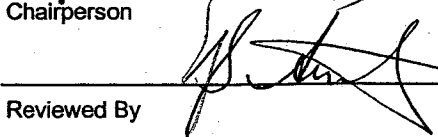
COMPOSITE

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (7 members)	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	280	261	258
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	245	217	209
Proposer's software and technical capabilities, including ancillary services		15	105	93	94
Total Technical Points (Total of above rows)				571	561
Total Price Points		10	70	70.00	62.88
TOTAL POINTS (Technical + Price)				641.00	623.88
Local Preference* (Highest ranked proposer's total points - 5% = Local Preference range)					

Signature:



Chairperson



Reviewed By

Date:

5/13/05

5/13/05

RFP No. 477a
External Independent Audit Services
Evaluation of Proposals
General Segment Audit

Graciela Cespedes

SELECTION CRITERIA	Maximum Points	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services	40	38	33
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement	35	34	32
Proposer's software and technical capabilities, including ancillary services	15	14	12
Total Technical Points <i>(Total of above rows)</i>		86	77
Total Price Points	10	10.00	8.98
TOTAL POINTS <i>(Technical + Price)</i>		96.00	85.98

RFP No. 477a
External Independent Audit Services
Evaluation of Proposals
General Segment Audit

Jose Fernandez

SELECTION CRITERIA	PROPOSERS	Maximum Points	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	40	40
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	30	23
Proposer's software and technical capabilities, including ancillary services		15	15	15
Total Technical Points <i>(Total of above rows)</i>			85	78
Total Price Points			10.00	8.98
TOTAL POINTS <i>(Technical + Price)</i>			95.00	86.98

RFP No. 477a
External Independent Audit Services
Evaluation of Proposals
General Segment Audit

Charles Anderson

SELECTION CRITERIA	Maximum Points	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services	40	36	38
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement	35	31	33
Proposer's software and technical capabilities, including ancillary services	15	13	14
Total Technical Points <i>(Total of above rows)</i>		80	85
Total Price Points	10	10.00	8.98
TOTAL POINTS <i>(Technical + Price)</i>		90.00	93.98

138

RFP No. 477a
External Independent Audit Services
Evaluation of Proposals
General Segment Audit

Cathy Jackson

SELECTION CRITERIA	PROPOSERS	Maximum Points	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	35	37
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	22	26
Proposer's software and technical capabilities, including ancillary services		15	13	13
Total Technical Points <i>(Total of above rows)</i>			70	76
Total Price Points		10	10.00	8.98
TOTAL POINTS <i>(Technical + Price)</i>			80.00	84.98

139

RFP No. 477a
External Independent Audit Services
Evaluation of Proposals
General Segment Audit

Miriam Abreu

SELECTION CRITERIA	Maximum Points	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services	40	35	35
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement	35	35	35
Proposer's software and technical capabilities, including ancillary services	15	15	15
Total Technical Points <i>(Total of above rows)</i>		85	85
Total Price Points	10	10.00	8.98
TOTAL POINTS <i>(Technical + Price)</i>		95.00	93.98

140

RFP No. 477a
External Independent Audit Services
Evaluation of Proposals
General Segment Audit

Dana Moss

SELECTION CRITERIA	PROPOSERS	Maximum Points	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	40	40
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	35	30
Proposer's software and technical capabilities, including ancillary services		15	10	12
Total Technical Points <i>(Total of above rows)</i>			85	82
Total Price Points		10	10.00	8.98
TOTAL POINTS <i>(Technical + Price)</i>			95.00	90.98

RFP No. 477a
External Independent Audit Services
Evaluation of Proposals
General Segment Audit

Sheri McGriff

SELECTION CRITERIA	PROPOSERS	Maximum Points	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	37	35
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	30	30
Proposer's software and technical capabilities, including ancillary services		15	13	13
Total Technical Points <i>(Total of above rows)</i>			80	78
Total Price Points		10	10.00	8.98
TOTAL POINTS <i>(Technical + Price)</i>			90.00	86.98

142

RFP No. 477b
External Independent Audit Services
EVALUATION OF PROPOSALS
Aviation Segment Audit

COMPOSITE

SELECTION PROPOSERS \ CRITERIA	Maximum Points Per Member	Maximum Total Points (7 members)	UHY LLP	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services	40	280	200	257	266
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement	35	245	161	218	219
Proposer's software and technical capabilities, including ancillary services	15	105	56	99	94
Total Technical Points (Total of above rows)			417	574	579
Total Price Points	10	70	-	58.55	70.00
TOTAL POINTS (Technical + Price)			-	632.55	649.00
Local Preference* (Highest ranked proposer's total points - 5% = Local Preference range)					

Signature:

Chairperson

Reviewed By

Date:

5/13/05

5/13/05

RFP No. 477b
External Independent Audit Services
Evaluation of Proposals
Aviation Segment Audit

Graciela Cespedes

SELECTION CRITERIA	Maximum Points	UHY LLP	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services	40	24	30	37
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement	35	20	29	33
Proposer's software and technical capabilities, including ancillary services	15	12	13	13
Total Technical Points <i>(Total of above rows)</i>		56	72	83
Total Price Points	10	-	8.36	10.00
TOTAL POINTS <i>(Technical + Price)</i>		-	80.36	93.00

RFP No. 477b
External Independent Audit Services
Evaluation of Proposals
Aviation Segment Audit

Jose Fernandez

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	35	40	40
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	20	30	25
Proposer's software and technical capabilities, including ancillary services		15	5	15	15
Total Technical Points (Total of above rows)			60	85	80
Total Price Points		10	-	8.36	10.00
TOTAL POINTS (Technical + Price)			-	93.36	90.00

145

RFP No. 477b
External Independent Audit Services
Evaluation of Proposals
Aviation Segment Audit

Charles Anderson

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	35	40	40
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	30	35	30
Proposer's software and technical capabilities, including ancillary services		15	5	15	10
Total Technical Points <i>(Total of above rows)</i>			70	90	80
Total Price Points		10	-	8.36	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	98.36	90.00

RFP No. 477b
External Independent Audit Services
Evaluation of Proposals
Aviation Segment Audit

Cathy Jackson

SELECTION CRITERIA	Maximum Points	UHY LLP	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services	40	20	37	37
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement	35	21	26	28
Proposer's software and technical capabilities, including ancillary services	15	8	15	15
Total Technical Points <i>(Total of above rows)</i>		49	78	80
Total Price Points	10	-	8.36	10.00
TOTAL POINTS <i>(Technical + Price)</i>		-	86.36	90.00

RFP No. 477b
External Independent Audit Services
Evaluation of Proposals
Aviation Segment Audit

Miriam Abreu

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	24	35	35
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	21	35	35
Proposer's software and technical capabilities, including ancillary services		15	3	15	15
Total Technical Points (Total of above rows)			48	85	85
Total Price Points		10	-	8.36	10.00
TOTAL POINTS (Technical + Price)			-	93.36	95.00

RFP No. 477b
External Independent Audit Services
Evaluation of Proposals
Aviation Segment Audit

Dana Moss

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	30	40	40
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	20	30	33
Proposer's software and technical capabilities, including ancillary services		15	10	12	12
Total Technical Points <i>(Total of above rows)</i>			60	82	85
Total Price Points		10	-	8.36	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	90.36	95.00

RFP No. 477b
External Independent Audit Services
Evaluation of Proposals
Aviation Segment Audit

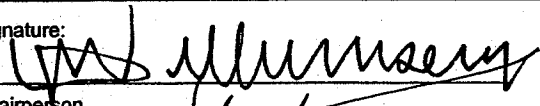
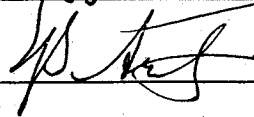
Sheri McGriff

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	KPMG LLP	Ernst & Young LLP
Proposer's approach and experience in providing governmental audit services		40	32	35	37
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	29	33	35
Proposer's software and technical capabilities, including ancillary services		15	13	14	14
Total Technical Points <i>(Total of above rows)</i>			74	82	86
Total Price Points		10	-	8.36	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	90.36	96.00

RFP No. 477c
External Independent Audit Services
EVALUATION OF PROPOSALS
Water & Sewer Segment Audit

COMPOSITE

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (7 members)	UHY LLP	Rachlin Cohen & Holtz LLP	Moore Stephens Lovelace, PA
Proposer's approach and experience in providing governmental audit services		40	280	190	243	215
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	245	153	210	179
Proposer's software and technical capabilities, including ancillary services		15	105	55	82	65
Total Technical Points (Total of above rows)				398	535	459
Total Price Points		10	70	-	59.07	70.00
TOTAL POINTS (Technical + Price)				-	594.07	529.00
Local Preference* (Highest ranked proposer's total points - 5% = Local Preference range)						

Signature: 
Chairperson

Reviewed By

Date: 5/13/05
5/13/05

RFP No. 477c
External Independent Audit Services
Evaluation of Proposals
Water & Sewer Segment Audit

Graciela Cespedes

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	Rachlin Cohen & Holtz LLP	Moore Stephens Lovelace, PA
Proposer's approach and experience in providing governmental audit services		40	23	36	26
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	18	33	22
Proposer's software and technical capabilities, including ancillary services		15	8	10	8
Total Technical Points <i>(Total of above rows)</i>			49	79	56
Total Price Points		10	-	8.44	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	87.44	66.00

RFP No. 477c
External Independent Audit Services
Evaluation of Proposals
Water & Sewer Segment Audit

Jose Fernandez

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	Rachlin Cohen & Holtz LLP	Moore Stephens Lovell, PA
Proposer's approach and experience in providing governmental audit services		40	35	35	40
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	20	30	25
Proposer's software and technical capabilities, including ancillary services		15	5	10	5
Total Technical Points <i>(Total of above rows)</i>			60	75	70
Total Price Points		10	-	8.44	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	83.44	80.00

RFP No. 477c
External Independent Audit Services
Evaluation of Proposals
Water & Sewer Segment Audit

Charles Anderson

SELECTION CRITERIA	Maximum Points	UHY LLP	Rachlin Cohen & Holtz LLP	Moore Stephens Lovellace, PA
Proposer's approach and experience in providing governmental audit services	40	36	39	38
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement	35	32	35	34
Proposer's software and technical capabilities, including ancillary services	15	12	14	13
Total Technical Points <i>(Total of above rows)</i>		80	88	85
Total Price Points	10	-	8.44	10.00
TOTAL POINTS <i>(Technical + Price)</i>		-	96.44	95.00

154

RFP No. 477c
External Independent Audit Services
Evaluation of Proposals
Water & Sewer Segment Audit

Cathy Jackson

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	Rachlin Cohen & Holtz LLP	Moore Stephens Loveland, PA
Proposer's approach and experience in providing governmental audit services		40	17	25	17
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	18	22	18
Proposer's software and technical capabilities, including ancillary services		15	7	10	7
Total Technical Points <i>(Total of above rows)</i>			42	57	42
Total Price Points		10	-	8.44	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	65.44	52.00

RFP No. 477c
External Independent Audit Services
Evaluation of Proposals
Water & Sewer Segment Audit

Miriam Abreu

SELECTION CRITERIA	Maximum Points	UHY LLP	Rachlin Cohen & Holtz LLP	Moore Stephens Lovelace, PA
Proposer's approach and experience in providing governmental audit services	40	24	33	25
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement	35	21	29	22
Proposer's software and technical capabilities, including ancillary services	15	3	13	10
Total Technical Points <i>(Total of above rows)</i>		48	75	57
Total Price Points	10	-	8.44	10.00
TOTAL POINTS <i>(Technical + Price)</i>		-	83.44	67.00

RFP No. 477c
External Independent Audit Services
Evaluation of Proposals
Water & Sewer Segment Audit

Dana Moss

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	Rachlin Cohen & Holtz LLP	Moore Stephens Lovelace, PA
Proposer's approach and experience in providing governmental audit services		40	24	40	32
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	16	33	25
Proposer's software and technical capabilities, including ancillary services		15	6	12	9
Total Technical Points <i>(Total of above rows)</i>			46	85	66
Total Price Points		10	-	8.44	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	93.44	76.00

RFP No. 477c
External Independent Audit Services
Evaluation of Proposals
Water & Sewer Segment Audit

Sheri McGriff

SELECTION CRITERIA	PROPOSERS	Maximum Points	UHY LLP	Rachlin Cohen & Holtz LLP	Moore Stephens Loveland, PA
Proposer's approach and experience in providing governmental audit services		40	31	35	37
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	28	28	33
Proposer's software and technical capabilities, including ancillary services		15	14	13	13
Total Technical Points <i>(Total of above rows)</i>			73	76	83
Total Price Points		10	-	8.44	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	84.44	93.00

RFP No. 477d
External Independent Audit Services
EVALUATION OF PROPOSALS
Aviation Management Contracts Segment Audit

COMPOSITE

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (7 members)	S. Davis & Associates, P.A.	Sanson, Kline, Jacomino & Company, LLP	Watson Rice LLP
Proposer's approach and experience in providing governmental audit services		40	26	187	224	242
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	245	148	198	205
Proposer's software and technical capabilities, including ancillary services		15	105	51	58	71
Total Technical Points (Total of above rows)				386	480	518
Total Price Points		10	70	-	61.64	70.00
TOTAL POINTS (Technical + Price)				-	541.64	588.00
Local Preference* (Highest ranked proposer's total points - 5% = Local Preference range)						

Signature:

Chairperson

Reviewed By

Date:

5/13/05

5/13/05

RFP No. 477d
External Independent Audit Services
Evaluation of Proposals
Aviation Management Contracts Segment Audit

Graciela Cespedes

SELECTION CRITERIA	PROPOSERS	Maximum Points	S. Davis & Associates, P.A.	Sanson, Kline, Jacomino & Company, LLP	Watson Rice LLP
Proposer's approach and experience in providing governmental audit services		40	20	33	35
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	15	33	28
Proposer's software and technical capabilities, including ancillary services		15	7	10	10
Total Technical Points <i>(Total of above rows)</i>			42	76	73
Total Price Points		10	-	8.81	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	84.81	83.00

RFP No. 477d
External Independent Audit Services
Evaluation of Proposals
Aviation Management Contracts Segment Audit

Jose Fernandez

SELECTION CRITERIA	PROPOSERS	Maximum Points	S. Davis & Associates, P.A.	Sanson, Kline, Jacomino & Company, LLP	Watson Rice LLP
Proposer's approach and experience in providing governmental audit services		40	30	35	35
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	25	30	30
Proposer's software and technical capabilities, including ancillary services		15	5	5	10
Total Technical Points (Total of above rows)			60	70	75
Total Price Points		10	-	8.81	10.00
TOTAL POINTS (Technical + Price)			-	78.81	85.00

RFP No. 477d
External Independent Audit Services
Evaluation of Proposals
Aviation Management Contracts Segment Audit

Charles Anderson

SELECTION CRITERIA	PROPOSERS	Maximum Points	S. Davis & Associates, P.A.	Sanson, Kline, Jacomino & Company, LLP	Watson Rice LLP
Proposer's approach and experience in providing governmental audit services		40	40	35	40
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	30	35	30
Proposer's software and technical capabilities, including ancillary services		15	5	5	10
Total Technical Points <i>(Total of above rows)</i>			75	75	80
Total Price Points		10	-	8.81	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	83.81	90.00

RFP No. 477d
External Independent Audit Services
Evaluation of Proposals
Aviation Management Contracts Segment Audit

Cathy Jackson

SELECTION CRITERIA	PROPOSERS	Maximum Points	S. Davis & Associates, P.A.	Sanson, Kline, Jacomino & Company, LLP	Watson Rice LLP
Proposer's approach and experience in providing governmental audit services		40	19	21	24
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	15	17	21
Proposer's software and technical capabilities, including ancillary services		15	7	7	7
Total Technical Points <i>(Total of above rows)</i>			41	45	52
Total Price Points		10	-	8.81	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	53.81	62.00

RFP No. 477d
External Independent Audit Services
Evaluation of Proposals
Aviation Management Contracts Segment Audit

Miriam Abreu

SELECTION CRITERIA	PROPOSERS	Maximum Points	S. Davis & Associates, P.A.	Sanson, Kline, Jacomino & Company, LLP	Watson Rice LLP
Proposer's approach and experience in providing governmental audit services		40	17	32	33
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	15	29	29
Proposer's software and technical capabilities, including ancillary services		15	7	9	9
Total Technical Points <i>(Total of above rows)</i>			39	70	71
Total Price Points		10	-	8.81	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	78.81	81.00

RFP No. 477d
External Independent Audit Services
Evaluation of Proposals
Aviation Management Contracts Segment Audit

Dana Moss

SELECTION CRITERIA	PROPOSERS	Maximum Points	S. Davis & Associates, P.A.	Sanson, Kline, Jacomino & Company, LLP	Watson Rice LLP
Proposer's approach and experience in providing governmental audit services		40	35	38	40
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	20	25	35
Proposer's software and technical capabilities, including ancillary services		15	10	10	12
Total Technical Points <i>(Total of above rows)</i>			65	73	87
Total Price Points		10	-	8.81	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	81.81	97.00

RFP No. 477d
External Independent Audit Services
Evaluation of Proposals
Aviation Management Contracts Segment Audit

Sheri McGriff

SELECTION CRITERIA	PROPOSERS	Maximum Points	S. Davis & Associates, P.A.	Sanson, Kline, Jacomino & Company, LLP	Watson Rice LLP
Proposer's approach and experience in providing governmental audit services		40	26	30	35
Experience and qualifications of individuals and subcontractors performing audit work, and schedule for performing key phases of engagement		35	28	29	32
Proposer's software and technical capabilities, including ancillary services		15	10	12	13
Total Technical Points <i>(Total of above rows)</i>			64	71	80
Total Price Points		10	-	8.81	10.00
TOTAL POINTS <i>(Technical + Price)</i>			-	79.81	90.00

5/13/2005

166